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U.S. DISTRICT COURT
EASTERN DISTRICT OF LA
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LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

IN RE:	EDUCATIONAL TESTING	MDL NO: 1643
	SERVICE PRAXIS	
	PRINCIPLES OF LEARNING	SECTION: R(5)
	AND TEACHING: GRADES	
	7-12 LITIGATION	JUDGE VANCE
		MAG. JUDGE CHASEZ

THIS DOCUMENT RELATES TO ALL CASES

PLAINTIFFS' PRELIMINARY REPORT

Proposed Lead Counsel, Dawn M. Barrios, submits this preliminary report to the Court pursuant to Pretrial Order No. 1. This report was circulated to Plaintiffs' counsel seeking input from all. The matters reported herein constitute a consensus of Plaintiffs' counsel.

I. CORRECTED SERVICE LIST

Working with counsel for Educational Testing Service ("ETS"), Plaintiffs prepared a Corrected Service List indicating all counsel, their street and email addresses, as well as telephone and facsimile numbers. The Corrected Service List (attached as Exhibit "A") lists all counsel for each case; the name of the lead counsel appears first.

II. SERVICE OF PRETRIAL ORDER

Undersigned counsel either emailed or faxed copies of Pretrial Order No. 1 to all Plaintiffs' counsel on the Corrected Service List advising them of filing deadlines and the Status Conference.

Fee	_____
Process	_____
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Doc. No	14

Counsel for ETS has advised all defense counsel of the Pretrial Order No. 1.

III. PRELIMINARY UNDERSTANDING OF PERTINENT FACTS

On nine administrations of the Praxis Principles of Learning and Teaching: Grades 7-12 test between January 2003 and April 2004 (the “PLT:7-12”), ETS wrongfully failed approximately 4,100 test takers. The test takers were teacher candidates seeking certification, as required by their states. These teacher candidates received non-passing scores when they should have received passing scores. The approximately 4,100 candidates took the test in 19 different states.¹ The states having the most false failure scores are Ohio, with approximately 1231, Pennsylvania, with approximately 562, and Louisiana , with approximately 486.² Generally, the plaintiffs allege that ETS breached contractual and tort duties owed in the administration, grading, and reporting of the PLT: 7-12 test.

The critical factual issues include, but are not limited to:

- How ETS designed, graded and scored the tests;
- What the scoring anomaly was;
- Why the scoring anomaly occurred;
- How the scoring anomaly was detected;
- The corrective measures taken to ensure the scoring anomaly does not occur again;
- The method used to determine the number of test takers the scoring anomaly affected; and
- Whether such method was proper and identified all the test takers affected.

¹ Ohio, Pennsylvania, Louisiana, Kentucky, Nevada, Texas, W. Virginia, Arkansas, South Carolina, Kansas, Mississippi, Utah, Rhode Island, Minnesota, Tennessee, Missouri, Georgia, Hawaii and Maryland.

²These approximate numbers were calculated by ETS.

The major legal issues include the liability of ETS for negligence, breach of contract and other theories of liability and causes of action, including, but not limited to violations of antitrust, civil rights and consumer protection laws, and whether Rule 23's class certification is appropriate.

IV. ORGANIZATION OF COUNSEL

On December 22, 2004, undersigned counsel invited all Plaintiffs' counsel in the twenty-four (24) actions (13 transferred and 11 tag-along) to participate in a conference call to discuss leadership and the organization of counsel. It was unanimously decided that Plaintiffs would ask the Court for appointment of both a Lead Counsel and Liaison Counsel and that undersigned counsel had the full support of all Plaintiffs' counsel to make application for the position of Lead Counsel. Undersigned counsel and numerous other Plaintiffs' counsel seek the Court's appointment of Richard J. Arsenault as Liaison Counsel.

Plaintiffs believe the Court's appointment of a Plaintiffs' Steering Committee ("PSC") is proper. Attorneys seeking appointment to the PSC will file applications on or before January 14, 2004, as directed by Pretrial Order No. 1. The PSC Members should be qualified and timely file applications. Further, it is expected that the leadership will form various working committees, and if necessary, the establishment of an Executive Committee. The formation of the various committees will be made at the appropriate time after the Court appoints the PSC.

Plaintiffs' counsel have met and conferred on numerous occasions both in person and via telephone. Every counsel has been thoroughly professional and cooperative and it is anticipated that Plaintiffs' counsel will be able to formulate the committees necessary to successfully represent the teacher candidates affected.

V. AFFILIATED COMPANIES

As the affected test takers are prospective teachers, there are no affiliated companies to report to the Court. Plaintiffs' counsel are all members of law firms, the names of which are provided on Exhibit "A," the Corrected Service List. Plaintiffs are unaware of any associations or affiliations which would be relevant for recusal or other disqualification.

VI. PENDING MOTIONS

Plaintiffs are aware of pending Motions to Remand filed by Plaintiff and Defendant, Cecil Picard, in *Steven G. Miller vs. Educational Testing Service and Cecil Picard, Superintendent, La. Dept. of Education* Middle District of Louisiana, Civil Action No. 3:04-563, and filed by Plaintiff in *Raffael M. Billet vs. Educational Testing Service*, Eastern District of Pennsylvania, Civil Action No. 2:04-3795.

VII. RELATED FEDERAL OR STATE COURT CASES

To date thirteen (13) actions have been transferred to MDL-1643. The following are the eleven Federal cases that are related to the matters asserted in MDL-1643 and should be tag-along cases:

1. *Paul Vidrine v. Educational Testing Service*, United States District Court, Middle District of Louisiana, Docket No. 04-CV574-D-M1;
2. *Damon Rachal v. Educational Testing Service*, United States District Court, Middle District of Louisiana, Docket No. 04-687-D-M2;
3. *Traman LaDon Thibodeaux v. Educational Testing Service, Inc.*, United States District Court, District of New Jersey, Docket No. 04-3957 (MLC);
4. *Joan Beckwith v. Educational Testing Service*, United States District Court, Western District of Kentucky, Docket No. 3:04-CV-534-H;
5. *Laura Bass and Sebron B. Simpson v. Educational Testing Service*, United States

District Court, Southern District of Mississippi, Docket No. 3:04-CV-726;

6. *Danielle Wainwright v. Educational Testing Service*, United States District Court, District of New Jersey, Docket No. 04-4299 (SRC);
7. *Lurlene and Benjamin A. Stratton, et al v. Educational Testing Service*, United States District Court, Western District of Louisiana, Docket No. CV-04-1914;
8. *Sheila Dorris v. Educational Testing Service*, United States District Court, Northern District of Ohio, Docket No. 1:04-CV-1887;
9. *Sarah Hash v. Educational Testing Service*, United States District Court, Eastern District of Kentucky, Docket No. 7:04-CV-359-DLB;
10. *Melissa Wilthew v. Educational Testing Service*, United States District Court, Northern District of Ohio, Docket No. 4:04-CV-2319;
11. *Andra M. Bullock and Ronald Andre Baker v. Educational Testing Service*, United States District Court, Middle District of Tennessee, Docket No. 1:04-CV-0107.

Plaintiffs are aware of five state court cases which have not been removed, three in New Jersey and two in Louisiana. Those cases are as follows:

1. *Mary-Mathis Cooper v. Educational Testing Service*, Mercer County, New Jersey, Docket No. MER-L-2274-04;
2. *Kathleen Conley Jones v. Educational Testing Service*, Mercer County, New Jersey, Docket No. MER-L-1977-04;.
3. *Kevin Morris v. Educational Testing Service*, Mercer County, New Jersey, Docket No. MER-L-2176-04;
4. *Rusty G. Bourque v. Educational Testing Service*, 27th Judicial District Court, Parish of St. Landry, Louisiana, Docket No. 04-C-504; and
5. *Joshua Seth Ortego v. Educational Testing Service*, 27th Judicial District Court,

VIII. ADDITIONAL AGENDA ITEMS

Plaintiffs wish to add the following topics to the Agenda for discussion at the Status Conference on January 20, 2005:

1. Document and record preservation and retention;
2. ETS settlements with putative class members; and
3. Deadline for Rule 26(a)(1) disclosures.

Attached as Exhibit "B" is Plaintiffs' Proposed Revised Agenda. Plaintiffs' counsel will be prepared to discuss all matters raised in Pretrial Order No. 1 at the Status Conference on January 20, 2005.

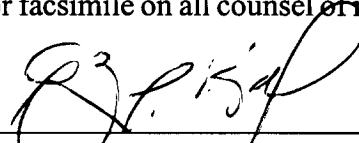
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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of January, 2005, I caused a true and correct copy of the above and foregoing document to be served by email or facsimile on all counsel of record shown on the attached service list.


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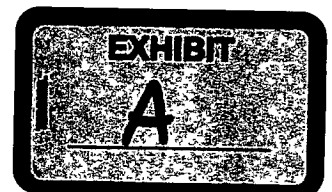
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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

IN RE:	EDUCATIONAL TESTING SERVICE PRAXIS PRINCIPLES OF LEARNING AND TEACHING: GRADES 7-12 LITIGATION	MDL NO: 1643 SECTION: R(5) JUDGE VANCE MAG. JUDGE CHASEZ
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THIS DOCUMENT RELATES TO ALL CASES

PLAINTIFFS' PROPOSED REVISED AGENDA FOR INITIAL CONFERENCE

1. Appointment of Lead and Liaison Counsel and Plaintiffs' Steering Committee
2. Service of Papers
3. Pretrial Schedule
 - a. Consolidated Complaint, Amendment of Pleadings, Joinder of Parties
 - b. Motion Practice: Deadlines, Hearings, and Briefs
 - c. Discovery Plan and Schedule
 - (1) Deadline for Rule 26(a)(1) Disclosures
 - d. Class Certification: Briefs and Hearing
4. Role of Magistrate Judge
5. Coordination with Related Litigation in State Courts



6. Document Issues
 - a. Document and Record Preservation and Retention
7. Other Matters
 - a. Educational Testing Service Settlements With Putative Class Members
8. Next Conference

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